IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION (LODG.) NO.262 OF 2005

Kuoni Travels (India) Pvt.
Ltd. ..Petitioner.

Vs.

State of Maharashtra & Ors. ..Respondents.

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Mr. V.R. Dhond i/b M/s. Negandhi, Shah & Himayatullah for the Petitioner.

Mr. Milind More, AGP for Respondent Nos.1 and 2.

Mr. Ganpat Damaji Sherekar - Respondent No.2 Tahsildar is present.

Mr. S.G. Bhandary for Respondent No.4.

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CORAM : DR.D.Y.CHANDRACHUD, J.

28th January, 2005.

P.C. :

The Petitioner is a private limited

company inter alia engaged in the business of tours and travels. The Fourth Respondent is the owner of premises admeasuring 2190 sq. ft. situated on the second floor of a building known as Maker Bhavan I at New Marine Lines, Mumbai 400 021. The share certificate in respect of the premises is stated to stand in the name of the Fourth Respondent. The Fourth Respondent was carrying on the business of providing services in the nature of a business centre in the premises. On 10th December, 2004 the Petitioner and the Fourth Respondent entered into a Memorandum of Understanding under which the Fourth Respondent agreed to grant to the Petitioner the right to use the premises for a period of 36 months. The Petitioner is stated to have paid an amount of Rs.14.40 lacs by a cheque dated 13th December, 2004. The Petitioner is stated to have been placed in possession of the premises on 10th December, 2004. A formal agreement dated 27th December, 2004 was thereafter entered into between the Petitioner and the Fourth Respondent by which the Petitioner was permitted to use the premises for a period of 36 months in consideration of a payment of Rs.1,20,00/- per month as service

charges. The Petitioner has been placed in possession of the premises. According to the Petitioner before handing over possession, the Fourth Respondent had removed the moveables which were in the premises including computers and other furniture. The Petitioner has thereupon brought in its own furniture. On 17th January, 2005 officials of the Second Respondent, who is the Tahsildar, visited the premises and served a notice of sale dated 12th January, 2005. The notice has been addressed to one Sandeep K. Mansingka in his capacity as a Director and Guarantor of the dues of M/s. Mayur Oils & Foods Pvt. Ltd. These dues are stated to be owing to the Third Respondent - Madhya Pradesh State Industrial Development Corporation Limited and the notice recites that the dues are in the amount of Rs.11,07,95,022/-. The contention of the Petitioner is that he has no connection or concern either with the person to whom the notice is addressed or the company in respect of whose dues the aforesaid person Sandip K. Mansingka has allegedly furnished a guarantee. An Advocate’s notice dated 24th January, 2001 was addressed on behalf of the Petitioner. The sale is stated to be

fixed for today and accordingly this Petition under Article 226 has been instituted.

The Learned AGP appearing for Respondent Nos.1 and 2 has stated before the Court that a notice of demand was initially issued on 10th November, 2003 to Sandeep K. Mansingka, following which on 25th June, 2004 attachment was levied in respect of the movables situated in the premises. The business centre agreement with the Petitioner was entered into on 27th December, 2004. Learned AGP states on instructions that the First and Second Respondents have not levied any attachment in respect of the moveables belonging to the Petitioner and which are now housed in the premises in pursuance of the business centre agreement dated 27th December, 2004. The attachment it was stated was levied on 25th June, 2004 in respect of the moveables that were found in the premises much prior to the date on which the Petitioner took possession of the premises. In view of the aforesaid statement, the grievance of the Petitioner in the petition really does not survive any further. The attachment that was levied on

25th June, 2004 was in respect of certain moveables which were then found in the premises. Counsel appearing on behalf of the Fourth Respondent states

that these moveables were shifted out of the premises and are presently housed in the godown of the Fourth Respondent at Jalgaon. Counsel further tenders an undertaking that the Fourth Respondent shall not deal with these moveables without moving an application before the Collector under Section 218 of the Maharashtra Land Revenue Code and obtaining an order for the raising of the attachment. Under Section 218 if a claim is set up by a third person to the property attached or proceeded against under the provisions of the Code, the Collector on formal inquiry held after reasonable notice may admit or reject the claim. The AGP has stated that the value of the moveables which were attached on 25th June, 2004 was assessed at Rs.36,900/-. Counsel for the Fourth Respondent states that without prejudice to the rights and contentions of the Fourth Respondent, the Fourth Respondent would deposit forthwith an amount of Rs.36,900/- with the Second Respondent on or before

31st January, 2005. The undertaking is accepted.

The Fourth Respondent would be at liberty to adopt appropriate proceedings for the raising of the attachment that was levied on 25th June, 2004 and for returning of the amount which is furnished as aforesaid as security. In so far as the Petitioner is concerned, the statement made by the learned AGP to the effect that no attachment has been levied in respect of the moveables that are of the ownership of the Petitioner is sufficient to meet the grievance of the Petitioner. The Petition is accordingly disposed of.